

DOCUMENT NO. RR-278444-2

FILED JUL 30 1991

OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

Agreement

③ DUPLICATE  
ORIGINAL

This Agreement is made on the 30th day of July, 1991 by and between the City of San Diego, a municipal corporation herein called "City" and the Mission Trails Regional Park Foundation Inc. a California non-profit public benefit corporation herein called "Foundation."

Recitals

- A. Foundation is organized under the Non-profit Public Benefit Corporation Law pursuant to which Articles of Incorporation were endorsed and filed with the office of the Secretary of State of the State of California as Document Number 1554194 on February 22, 1988, a copy of which are incorporated into this Agreement as Exhibit A.
- B. The public purposes of the Foundation are to preserve, improve, develop and maintain Mission Trails Regional Park, herein called the "Park," in the City and County of San Diego and to foster public appreciation and understanding of Mission Trails Regional Park.
- C. City and Foundation have entered into a Master Agreement governing the use of public funds which may from time to time become available to the Foundation for its public purposes, said Master Agreement being on file in the Office of the City Clerk as Document No. RR-278444-1
- D. Paragraph VI of the Master Agreement provides that implementation of each Capital Improvement Project shall be the subject of a separate Agreement.
- E. City and Foundation have determined that construction of a visitor center to serve as a focal point for Park visitors, as an interpretive center, and to house the primary Park ranger station, herein called the Project, is critical to future development plans for the Park.
- F. The State of California, acting through the State Department of Parks and Recreation has approved two (2) separate grants to the Foundation for the Project, each in the amount of \$900,000 of which \$13,500 will be retained by the State from each grant to cover State administrative costs, leaving a total net amount to the Foundation of a \$1,773,500.
- G. Additional funding from other sources including the Public Fund Account established pursuant to the Master Agreement referred to in Recital C herein is also available, or may from time to time become available, for development of the Project.
- H. City and Foundation desire to proceed with construction of the Project and to share the cost thereof.

Now therefore, in recognition of the Recitals and the mutual obligations the parties as herein expressed, City and Foundation do agree as follows:

- I. For purposes of this Agreement, City shall assume the role of Project Manager and as such, shall have lead responsibility for design and construction of the Project including but not limited to hiring of architects, engineers and other professional design consultants,

project management and administration, financial management and accounting, approval of plans, issuance of permits, advertising for bids, award of contract, construction inspection, payments to contractor, Project acceptance plus any and all other activities required for design and construction of the Project.

- II. For purposes of this Agreement, Foundation shall assume the role of client and as such shall be the primary decision maker for the design features of the Project which are typically within the purview of the client, to wit the following program elements:

- o Siting and orientation of building
- o Size and shape building
- o Number and size of rooms
- o Specific architectural features
- o Building materials

Foundation's desires regarding these and other aspects of the building shall be conveyed to the City's consultants through the City as Project Manager. Foundation's desires regarding the Project are subject to the review of the Mission Trails Regional Park Citizens Advisory Committee and the Mission Trails Regional Park Task Force. Foundation's desires shall be given full consideration as is typically accorded a project client, provided however that City shall be under no obligation to agree to Foundations's wishes where unacceptable negative impacts may result, including but not limited to:

- o Extraordinary construction costs
- o Extraordinary maintenance costs
- o Unacceptable exposure to public liability
- o Building Code violations
- o Deviations from generally accepted and prudent practices of architecture or engineering.
- o Ineffective or improper use of public funds.

- III. Total project cost is estimated to be \$4,156,000 and is broken down as follows:

a. Construction	= \$3,320,000
b. Professional Services	= \$ 360,000
c. Construction Engineering	= \$ 260,000
d. Project Management	= \$ 30,000
e. Contingency	= \$ 166,000

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Total Project Budget = \$4,156,000

For purposes of this Agreement, "Construction" means anticipated payments to construction contractor(s); "Professional Services" means anticipated costs for private consultants such as architects and/or engineers; "Construction Engineering" means anticipated costs for materials testing, surveying, construction inspection, etc., after award of a construction contract; "Project Management" means anticipated costs to City in its role as Project Manager including

but not limited to plan checking, completion of environmental documents, contract processing, etc.; "Contingency" shall mean a budgetary reserve to accommodate costs that cannot be anticipated at this time.

- IV. City and Foundation shall each assume a pro-rata share of the total Project cost, currently estimated to be as follows:

City	=	57%
Foundation	=	43%

Cost sharing is based on the funds available or estimated to soon become available to each party in accordance with Recitals F and G and results in the following sharing of costs:

City	=	\$2,373,000
Foundation	=	\$1,773,500

- V. Within the cost sharing provisions of Paragraph IV above, but in order to minimize bookkeeping, State Grant funds shall be used for construction only, as enumerated and estimated in Paragraph III(a). Funds from the Public Fund Account referred to in Recital G shall be used to finance 100% of the costs for professional services, construction engineering, project management, and contingency, as enumerated and estimated in Paragraph III(b), (c), (d) and (e) of this Agreement, and for construction to the extent necessary to fulfill City's share of total Project cost.
- VI. At the earliest opportunity under terms of its Agreement with the State Department of Parks and Recreation, Foundation shall apply for an advance of the maximum amount of State Grant Funds allowed at each stage of the project, and shall retain such grant funds in an account from which they may be readily withdrawn for purposes of paying Foundation's share of project costs.
- VII. From time to time during the construction phase of the project, City, in its role as Project Manager, will incur costs as enumerated and estimated in Paragraph III(a) of this Agreement. Within ten (10) days of City's written request for reimbursement of Foundation's share of construction costs, Foundation shall reimburse City in the amount requested from Foundation's State Grant Funds as referred to Recital F of this Agreement. City shall provide Foundation with all documentation of costs incurred to support its requests for reimbursement. Foundation shall make all reimbursements for construction costs incurred by City from Foundation's State Grant Funds until said grant funds are exhausted after which reimbursement to City for construction costs shall be made from the Public Fund Account referred to in Recital G of this Agreement.
- VIII. City shall request 100% of the funds required for project elements III(b); professional services and III(d); project management at any time at its discretion after the effective date of this Agreement. Foundation's payment to City for Project element III(b) and III(d) shall be in the form of a check drawn on the Public Funds Account referred to in Recital G of this Agreement and payable to the City Treasurer.

- IX. City shall request 100% of funds required for Project Elements III(c); construction engineering and III(e); contingency at any time at its discretion after City has awarded a construction contract for the project. Foundation's payment to City for Project Elements III(c) and III(e) shall be in the form of a check drawn on the Public Funds Account referred to in Recital G of this Agreement and payable to the City Treasurer.
- X. Upon completion of the plans, specifications and cost estimate for the Project, City and Foundation shall meet to review the Project cost estimate as prepared by the City's Project consultant. In the event that the total Project cost estimate as developed by City's Project consultant exceeds the total of funds available or expected to become available for Project, City and Foundation shall meet and confer regarding which items of work shall be identified in the bid package as deductive alternates, or deleted from the bid package, in order to bring the total Project cost within the limit of available funding.
- IX. City and Foundation having agreed to the items of work to be included in the bid package, City shall, subject to approval of the City Council, cause the Project to be publicly advertised for construction bids.
- XII. City shall provide Foundation with written notice of the time and place set aside for the bid opening and Foundation may at its option have a representative present.
- XIII. If the lowest responsive and responsible bid is at or below the limits of funds available to complete the Project including construction, inspection, materials testing, engineering, administration and related costs, City shall so notify Foundation in writing of the exact amount of money required to complete the Project.
- XIV. If the lowest responsive and responsible bid is above the limit of funds available to complete the Project including construction, inspection, materials testing, engineering, administration and related costs, City and Foundation shall reach agreement on which items work may be deleted from the Project in order to bring the total cost of completing the Project within the limit of the funds available. For purposes of arriving at this decision the provisions of Paragraph II of this Agreement shall apply. If it is not possible or desirable to reduce the scope of work to fit the funds available, the City Manager shall recommend to the City Council that all bids be rejected. In such case, City and Foundation shall review the remaining options, including but not limited to; await a more favorable bidding climate, redesign the Project, await additional funding or abandon the Project.
- XV. Within 120 days after City's acceptance of the completed Project, City shall provide Foundation with a final accounting of all Project costs, including the dollar amount paid from the Public Funds Account and the dollar amount paid from State Grant Funds.
- XVI. At all times during the term of this Agreement, Foundation shall have the right to review project files and City shall cooperate in making such files available to Foundation.

XVII. If three (3) years have elapsed from the date of execution of this Agreement and no contract has yet been awarded for construction of the Project, this Agreement may be suspended or terminated at the option of either City or Foundation or may be extended by mutual consent of the parties.

XVIII. City shall perform maintenance and custodial services for the Project after its completion for twenty-five (25) years or the life of the project whichever is less. The Project shall be operated as part of the City's park system. The City shall retain all rights of property ownership during and after the construction period. This obligation is subject to the budgeting of available funds each year by the City Council.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego acting by and through its City Manager pursuant to Resolution No. R278444 authorizing such execution and by Consultant this 30th day of July, 1991.

THE CITY OF SAN DIEGO

BY 

PARK AND RECREATION DIRECTOR

MISSION TRAILS REGIONAL PARK FOUNDATION INC.

BY 

MICHAEL PENT, PRESIDENT

I HEREBY APPROVE the form and legality of the foregoing Agreement this 82 day of Aug, 1991.

JOHN W. WITT, Attorney

BY 

MGAG1851



The City of San Diego

# MANAGER'S REPORT

DATE ISSUED: July 26, 1991

REPORT NO. 91-357

ATTENTION: City Council, Docket of <sup>July</sup>~~August~~ 30, 1991

SUBJECT: Agreements - Mission Trails Regional Park Foundation, Inc.

## SUMMARY

Issues - 1) Shall the City execute a Master Agreement with Mission Trails Regional Park Foundation, Inc., governing its role in the preservation, development and maintenance of Mission Trails Regional Park? 2) Shall the City execute a Project Agreement with Mission Trails Regional Park Foundation, Inc. for development of a visitor center? 3) Shall Council authorize a transfer and expenditure of funds toward implementation of these Agreements?

Manager's Recommendation - 1) Execute the Master Agreement. 2) Execute the Project Agreement. 3) Authorize the transfer of \$50,000 from the Cowles Mountain Antenna Fund (Fund 10580) to CIP 29-680, Mission Trails Regional Park Visitor Center to finance anticipated pre-construction costs. 4) Authorize the transfer of \$840,000 received by the City to date pursuant to Section 6.1(a)(1) of the Tierrasanta L-L Partnership Development Agreement, including all of the interest earned thereon, to the Public Fund Account of the Mission Trails Regional Park Foundation, Inc., to support Foundation's annual work programs and its participation in financing the visitor center project. 5) Authorize the transfer of \$360,000 due to the City on January 31, 1992, pursuant to Section 6.1(a)(1) of the Tierrasanta L-L Partnership Development Agreement, including any interest earned thereon to the Public Fund Account of the Mission Trails Regional Park Foundation, Inc., to support Foundation's annual work programs and its participation in financing the visitor center project.

Other Recommendations - Both the Mission Trails Regional Park Citizens' Advisory Committee and Task Force support Foundation participation in development of the visitor center.

Fiscal Impact: A total of \$1,200,000 in funds due to the City from the Tierrasanta L-L Partnership Development Agreement, plus interest, will be transferred to the Public Fund Account of the Mission Trails Regional Park Foundation, Inc., to support Foundation's annual work

programs and its participation in financing the visitor center project.

#### BACKGROUND

To facilitate its fund raising efforts, the Mission Trails Regional Park Citizens' Advisory Committee, with the encouragement of the Task Force, determined that it would pursue establishment of a non-profit foundation dedicated to the preservation of Mission Trails Regional Park. In February 1988, the Mission Trails Regional Park Foundation, Inc., was established under Non-profit Public Benefit Corporation Law for public and charitable purposes. The Foundation's Articles of Incorporation on file with the office of the Secretary of State, provide its public purposes to be "... to preserve, improve, develop and maintain... and to foster public appreciation and understanding of Mission Trails Regional Park."

The Foundation's current officers are:

Mike Pent, President  
Jean Hatton, Vice President  
Dorothy Leonard, Secretary/Treasurer

Other members of the Board of Directors are Councilmember Judy McCarty, Majorie Ferrante, and Jim Madaffer.

Shortly after the Foundation was established, and largely through the efforts of former State Senator Larry Stirling, the Foundation received a \$900,000 State grant for development of a visitor center at the Park. More recently, through the efforts of State Senator Lucy Killea, a second \$900,000 grant was approved last year for the project. It is important to note that these funds were granted directly to the Foundation and not to the City of San Diego. Use of the funds is restricted to construction of the visitor center.

In addition, to these State funds granted to the Foundation, there are also public funds deposited with the City of San Diego pursuant to a Development Agreement with Tierrasanta L-L Partnership which are to be used exclusively for "... the future improvement of Mission Trails Regional Park". These funds are to be paid to the City in installments which will total \$1,200,000. \$860,000 is already in hand, the remaining \$360,000 is due by January 31, 1992.

The recommendation before you for approval would transfer these Development Agreement funds from the City to a discrete account with the Mission Trails Regional Park Foundation for the preservation and improvement of Mission Trails Regional Park. From time to time Council authorization may be sought to transfer other funds from the City to the Foundation for the benefit of Mission Trails Regional Park.

#### DISCUSSION

Pursuant to the terms of the Master Agreement, funds transferred from the City to the Foundation may only be used by the Foundation for purposes which benefit Mission Trails Regional Park. All expenditures must be approved in advance by the City either through a City approved annual work

program or through separate Council approved agreements for Capital Improvement Projects.

The Master Agreement further provides for:

- o Establishment of a discrete "public fund account" which is to be the depository of all funds transferred from the City of San Diego.
- o City review and approval of annual work programs
- o Fund expenditure restrictions
- o Annual submission of audited financial reports
- o Records retention and rights of City to inspect all books and records

The visitor center Project Agreement addresses the roles and responsibilities of the parties in regard to development of the visitor center. This agreement provides for:

- o Duties and obligations of the City in its role of Project Manager
- o Duties and obligations of the Foundation in its role of client
- o Project review by the Mission Trails Regional Park Citizens' Advisory Committee and Task Force
- o Estimated total project budget
- o Costs sharing between City and Foundation
- o Obligation of Foundation to seek timely advances of State Grant funds
- o Obligation of Foundation to reimburse City in a timely matter as project costs are incurred
- o Process for adjusting scope of work to budget
- o Obligation of City to provide an accounting of project funds
- o Term of Agreement of 3 years
- o Terms for suspension, termination or extension of Agreement

Foundation funding provided for in the Agreement is \$1,773,000 (\$1,800,000 less \$27,000 retained by State for administrative costs) which Foundation is scheduled to receive from the two State grants. Other funds included in financing of the \$4,156,000 project will come from the Public Fund Account established pursuant the Master Agreement and from funds appropriated in the adopted FY 1991 Capital Improvement Program.

The visitor center project is currently in the architectural design phase. Council authorization to advertise for bids will be sought in October,



1991. Construction is scheduled to begin in March, 1992 and to be completed in approximately one year.

ALTERNATIVES

1. Modify one or both Agreements.
2. Reject one or both Agreements.

Respectfully submitted,



COLEMAN CONRAD  
Deputy City Manager

LOVELAND/DT

ATTACHMENTS: Master Agreement  
Agreement

NOTE: Due to the large size of the attachments, copies may be viewed in the office of the City Clerk

MGMR3128

4 CONTINUED

Visitors' Center, Fund No. 392010, Lusk - Regional Park Improvements, to the Mission Trails Regional Park Foundation, Inc.; and

5. Authorizing the transfer of current balance and all subsequent revenues including interest accrued from Fund No. 392010, Lusk - Regional Park Improvements, to the Mission Trails Regional Park Foundation, Inc.; and
6. Authorizing the transfer of \$50,000 from Mission Trails Regional Park Fund, Fund No. 10580, to CIP 29-680.0, Mission Trails Regional Park Visitors' Center.

Estimated Cost: \$890,000

